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10 Attorneys for Plaintiff/  
11 Counterdefendant Sky Zone, LLC

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13 **UNITED STATES DISTRICT COURT**  
14  
**DISTRICT OF NEVADA**

15 SKY ZONE, LLC, a Nevada limited liability  
16 company,

17 Plaintiff,

18 vs.

19 JERRY RAYMOND, an individual; ROBERT  
RAYMOND, an individual; RONALD  
RAYMOND, an individual; ROLLAND P.  
WEDDELL, an individual; CHRISTOPHER  
WEDDELL, an individual; SKY HIGH SPORTS,  
20 LLC, a Nevada limited liability company; SKY  
HIGH SPORTS CALIFORNIA, LLC, a Nevada  
limited liability company; SKY HIGH SPORTS  
CONCORD CALIFORNIA, LLC, a Nevada  
limited liability company; SKY HIGH SPORTS  
CONCORD OPERATIONS, LLC, a Nevada  
limited liability company; SKY HIGH SPORTS  
CONCORD, LLC, a Nevada limited liability  
company; SKY HIGH SPORTS FRANCHISE,  
21 LLC, a Nevada limited liability company; SKY  
HIGH SPORTS OPPORTUNITIES, LLC, a  
Nevada limited liability company; SKY HIGH  
SPORTS ORANGE COUNTY OPERATIONS,  
22 LLC, a Nevada limited liability company; SKY  
HIGH SPORTS ORANGE COUNTY, LLC, a  
Nevada limited liability company; SKY HIGH

23 Case No.: 3:11-cv-00141-ECR-WGC

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25 **DECLARATION OF SCOTT A.**  
**SCHROEDER IN SUPPORT OF SKY**  
**ZONE, LLC'S OPENING CLAIM**  
**CONSTRUCTION BRIEF**

1 SPORTS SACRAMENTO OPERATIONS, LLC,  
2 a Nevada limited liability company; SKY HIGH  
3 SPORTS SACRAMENTO, LLC, a Nevada limited  
liability company; SKY HIGH SPORTS SANTA  
4 CLARA OPERATIONS, LLC, a Nevada limited  
liability company; SKY HIGH SPORTS SANTA  
5 CLARA, LLC, a Nevada limited liability  
company; SKY HIGH SPORTS SEATTLE  
6 OPERATIONS, LLC, a Nevada limited liability  
company; SKY HIGH SPORTS SEATTLE, LLC,  
a Nevada limited liability company; SKY HIGH  
7 SPORTS WASHINGTON, LLC, a Nevada limited  
liability company; TRIBROS, LLC, a Nevada  
8 limited company,

9 Defendants.

10 AND RELATED COUNTERCLAIMS.

11 I, Scott A. Schroeder, declare and state as follows:

12 1. I make this declaration based on my own personal knowledge, and in support of  
13 Sky Zone, LLC's ("Sky Zone") Opening Claim Construction Brief.

14 2. I have been retained by Sky Zone as an expert in the above-captioned matter.

15 3. My qualifications and background are described in my *curriculum vitae*,  
16 attached as Ex. A.

17 4. I am not a lawyer and do not have special training in patent law. To the extent  
18 that I rely on legal standards for the purposes of rendering the opinions set forth herein, I do so  
19 based on information from counsel regarding such standards.

20 5. I have been informed that there is a disagreement in this case about the  
21 construction of two terms used in the claims of Sky Zone's U.S. Patent No. 5,624,122 (the  
22 "122 Patent"). The '122 Patent relates to a supported surface for transitional movement. The  
23 subject matter of the '122 Patent is within my core area of expertise.

24 6. The disputed terms are 1) "means to support each of said cables at their  
25 respective extremities" and 2) "elongated." Sky Zone has asked for my opinion as to what  
26 those terms would mean to one of ordinary skill in the art.

27 7. I have been informed by counsel that, for the purposes of determining the  
28 meaning of these terms, they are construed according to how they would have been understood

1 by a person having ordinary skill in the relevant art at the time of the effective filing date of the  
2 '122 Patent. I have been advised that the effective filing date for the '122 Patent is July 17,  
3 1996. It is my opinion that, with respect to the '122 Patent, a person having ordinary skill in  
4 the relevant art on that date would have possessed 1) work experience in trampoline design, or  
5 (2) a Bachelor of Science degree or higher (such as a Master's Degree and/or a Ph.D.) in  
6 Mechanical Engineering, with less industrial experience.

7 8. "Means to support each of said cables at their respective extremities" would  
8 have been understood by one of ordinary skill in the art in the context of the '122 Patent to  
9 mean posts and equivalents thereof.

10 9. "Elongated" as used in Claim 1 of the '122 Patent does not have a special  
11 technical definition. Rather, the word has its well-known and commonly understood meaning  
12 at the time of the effective filling date of the patent. Thus, the word would have been  
13 commonly understood, including by one of ordinary skill in the art at that time to mean, in the  
14 context of the '122 Patent, "long, in relation to its width," in other words, "slender, having more  
15 length than width." Furthermore, in engineering usage, "elongation" is defined (Mechanical  
16 Engineering Reference Manual for the PE Exam, M.R. Lindeburg, 11th edition) as the total  
17 plastic, non-elastic, strain at failure. As there is no provision for permanent or irreversible  
18 deformation of any structure within the '122 Patent, this is clearly not the intended usage.  
19 Attached as Ex. B is a true and correct print out of excerpts from Mechanical Engineering  
20 Reference Manual for the PE Exam, M.R. Lindeburg, 11<sup>th</sup> edition.

21 10. Attached as Ex. C is a true and correct print out of the *Elongated Definition*,  
22 Oxforddictionaries.com, <http://oxforddictionaries.com/definition/elongated> (last visited  
23 September 27, 2011).

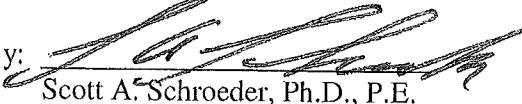
24 11. I have reviewed the specification and the prosecution history of the '122 Patent  
25 and have seen nothing to contradict my above opinions.

26 12. I have been informed by counsel that Defendants (collectively "Sky High")  
27 contend that the function for the means-plus-function claim should be identified as "to support  
28 said cables by supplying **tension** at each cable's respective extremities," the corresponding

1 structure as “posts **at the end of the field** that exert a **tensile** force to support the cables,” and  
2 that “elongated” should be construed as “**stretched**, placed in **tension**.” (emphasis added).  
3 Neither the claims nor the description of the ‘122 Patent support Sky High’s narrowing of the  
4 constructions. In particular, they do not support Sky High’s attempt to impose the requirement  
5 that tensile forces must be applied to the steel cables to stretch them. In addition, although the  
6 specification does disclose posts at “the edges of the field,” posts that are located elsewhere can  
7 also perform the recited function of supporting the cables such that the cables are “disposed  
8 above a ground level.”

9 I declare under penalty of perjury, pursuant to the laws of the United States, that the  
10 foregoing is true and correct to the best of my knowledge.

11 Dated this 28<sup>th</sup> day of September, 2011.

12  
13 By:   
14 Scott A. Schroeder, Ph.D., P.E.  
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**CERTIFICATE OF SERVICE**

Pursuant to Fed. R Civ. P. 5(b), I hereby certify that on this date a true and correct copy of **Declaration of Scott A. Schroeder in Support of Sky Zone, LLC's Opening Claim Construction Brief** was served upon the following individuals via electronic mail through the United States District Court's CM/ECF system.

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Dated: September 28, 2011

/s/Carla Ousby

Carla Ousby